

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the
Use of SHORESIDE PETROLEUM, INC.,
d/b/a Marathon Fuel Service, on its
own behalf,

Plaintiffs,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS INC.; UNITED STATES
FIDELITY AND GUARANTY COMPANY; and
ROBERT A. LAPORE,

Defendants.

Case No. A98-009 CV (HRH)

30(b)(6) DEPOSITION OF SHORESIDE PETROLEUM, INC.

Doug Lechner

Taken December 2, 2005
Commencing at 8:45 a.m.

Volume I - Pages 1 - 82, inclusive

Taken by the Defendant
at

OLES, MORRISON, RINKER & BAKER
745 W. Fourth Av., Suite 502
Anchorage, AK 99501

Reported by: Susan J. Warnick, RPR

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 For Plaintiff - Shoreside Petroleum, Inc.</p> <p>3 LAW OFFICES OF STEVEN J. SHAMBUREK</p> <p>4 BY: Steven J. Shamburek</p> <p>425 G Street, Suite 630</p> <p>Anchorage, AK 99501</p> <p>(907) 522-5339</p> <p>6 For Defendant - Nugget Construction:</p> <p>7 OLES, MORRISON, RINKER & BAKER</p> <p>8 BY: Traeger Machetanz</p> <p>745 W. Fourth Avenue, Suite 502</p> <p>Anchorage, AK 99501</p> <p>(907) 258-0106</p> <p>10 For ADF&G:</p> <p>11 BAROKAS, MARTIN & TOMLINSON</p> <p>12 BY: Herbert A. Viergutz</p> <p>1029 W. Third Av., Suite 280</p> <p>Anchorage, AK 99501</p> <p>(907) 277-3533</p> <p>14 For North Star:</p> <p>15 BURR, PEASE & KURTZ</p> <p>16 BY: Michael Sewright</p> <p>810 N Street</p> <p>Anchorage, AK 99501</p> <p>(907) 276-6100</p> <p>19 BE IT KNOWN that the aforementioned deposition was taken</p> <p>20 at the time and place duly noted on the title page, before</p> <p>21 Susan J. Warnick, Registered Professional Reporter and</p> <p>22 Notary Public within and for the State of Alaska.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 Q Yes, sir.</p> <p>2 A About probably -- no less than five minutes, maybe.</p> <p>3 Q No less than five minutes?</p> <p>4 A Yeah -- or no more than five minutes. I'm sorry.</p> <p>5 Q That's okay. Anybody else within Shoreside that you</p> <p>6 spoke with?</p> <p>7 A Just the owner of the company, Kurt Lindsey.</p> <p>8 Q And what did you speak with Mr. Lindsey about?</p> <p>9 A I've just -- essentially just telling -- just talking</p> <p>10 about the case and where we're heading and the</p> <p>11 depositions.</p> <p>12 Q What documents did you review?</p> <p>13 A I reviewed -- tried to review the legal documents.</p> <p>14 Q You're talking about the amended complaint, the</p> <p>15 disclosures, all of that?</p> <p>16 A Yes.</p> <p>17 Q How about the underlying project records?</p> <p>18 A The underlying project records.</p> <p>19 Q For example, your invoices, the billings?</p> <p>20 A Okay.</p> <p>21 Q Your prior affidavit.</p> <p>22 A Those were in some of the documents that I've seen.</p> <p>23 Q Approximately how much time did you spend preparing</p> <p>24 for this deposition?</p> <p>25 A Total time would be -- you know, I wouldn't say more</p>
<p style="text-align: right;">Page 3</p> <p>1 PROCEEDINGS</p> <p>2 DOUG LECHNER,</p> <p>3 called as a witness herein, being first duly sworn to</p> <p>4 state the truth, the whole truth and nothing but the truth</p> <p>5 by the Notary, testified under oath as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. MACHETANZ:</p> <p>8 Q Mr. Lechner, are you appearing today pursuant to a</p> <p>9 30(b)(6) deposition notice?</p> <p>10 A Yes, I am.</p> <p>11 Q And are you prepared to testify on behalf of</p> <p>12 Shoreside Petroleum, Inc., concerning the claims Shoreside</p> <p>13 has brought against Nugget and its bonding company in this</p> <p>14 matter?</p> <p>15 A Yes, I am.</p> <p>16 Q And would you please tell me what steps you have</p> <p>17 taken to prepare for this deposition.</p> <p>18 A I have reviewed some documents. I've had some</p> <p>19 discussions with Steve. And internally, company, just</p> <p>20 trying to look at old records. I've talked to a past</p> <p>21 controller of our company, trying to find some facts.</p> <p>22 Q Who would that individual be?</p> <p>23 A That was Ron Neibrugge.</p> <p>24 Q How long did you talk to Mr. Neibrugge?</p> <p>25 A About this topic?</p>	<p style="text-align: right;">Page 5</p> <p>1 than two hours maybe. A couple hours.</p> <p>2 Q That makes us about even.</p> <p>3 A Okay.</p> <p>4 Q Now, in connection with that, as the 30(b)(6)</p> <p>5 representative for Shoreside, you understand that you</p> <p>6 speak for the corporation?</p> <p>7 A Correct.</p> <p>8 Q Have you ever had your deposition taken before?</p> <p>9 A Not to my knowledge.</p> <p>10 Q You understand this is a question-and-answer process?</p> <p>11 A Uh-huh.</p> <p>12 A Yes.</p> <p>13 Q And because the court reporter is taking down the</p> <p>14 questions, you're going to have to speak up and answer</p> <p>15 audibly "yes" or "no;" a nod of the head won't work?</p> <p>16 A Yes.</p> <p>17 Q I will try not to talk over your answers. I would</p> <p>18 appreciate it if you will try not to talk over my</p> <p>19 questions. Can we try to accomplish that goal today?</p> <p>20 A Yes.</p> <p>21 Q The second thing is, I will try to ask coherent</p> <p>22 questions. There's no guarantee of that. If there's a</p> <p>23 question you don't understand, will you please let me know</p> <p>24 so I can rephrase it?</p> <p>25 A Yes, I will.</p>

<p style="text-align: right;">Page 6</p> <p>1 Q From time to time an attorney may pose an objection 2 during my questioning. If your -- unless your counsel 3 advises you not to answer the question, will you please 4 proceed to answer the question? 5 A Yes. 6 Q If at any time you want to take a break for whatever 7 reason, just let us know. This isn't an endurance 8 contest. The one request I have is, if I've asked you a 9 question, that you answer the question before you take the 10 break. Would you do that, sir? 11 A Yes. 12 Q Why don't we start then with your background. And by 13 that, I just want a thumbnail sketch of your highest level 14 of education and then a brief description of your work 15 history. 16 A Sure. Highest level of education was one year of 17 college. And the work history: I started out actually as 18 part owner of a fuel company after that one year of 19 college. 20 Q What fuel company was that? 21 A Marathon Fuel. And I sold it in 1991. It was sold 22 to Shoreside Petroleum, and I've been involved with 23 Shoreside Petroleum ever since, currently in the capacity 24 of vice president of marketing. 25 MR. SHAMBUREK: Traeger, if we could note. He's</p>	<p style="text-align: right;">Page 8</p> <p>1 products. Currently it owns a couple of retail gas 2 stations. 3 Q And how does Shoreside charge its customers? Or 4 particularly, how did Shoreside charge Spencer Rock for 5 the goods and services it provided? 6 A No different than any of our normal course of 7 business. We actually have provided product to them, 8 quoted them a price, they accepted. Probably didn't 9 charge high enough, but we have certain formulas we use in 10 our processes. 11 Q Let's then talk about the initial agreement. When 12 were you initially contacted by Spencer Rock wherein 13 Shoreside was requested to provide goods for Spencer Rock? 14 A I believe it was -- we actually did some business 15 with Spencer Rock prior to this Homer project with Nugget. 16 And that was about a year and a half, I believe, possibly, 17 I guess, a year earlier, that they were doing some work. 18 MR. MACHETANZ: Let's mark this as Exhibit 1, if 19 I could, please. 20 (Exhibit 1 marked.) 21 BY MR. MACHETANZ: 22 Q Do you recognize this as one of the documents you 23 reviewed? 24 A Yes, I do. 25 Q And if you would turn -- it starts on -- the fax</p>
<p style="text-align: right;">Page 7</p> <p>1 a distinguished graduate of Seward High. 2 MR. MACHETANZ: Coming from Palmer, I'm not sure 3 if I'm willing to stipulate to the term "distinguished" in 4 connection with Seward High. 5 MR. SHAMBUREK: His performance, not the school. 6 MR. MACHETANZ: Oh, okay. 7 MR. SEWRIGHT: And we're just 10 minutes into 8 the deposition, too. 9 BY MR. MACHETANZ: 10 Q All right. Let's talk about -- what were you doing 11 during the period of 1995 through 2000 for Shoreside? 12 A I was vice president of marketing. 13 Q What involvement did you personally have in 14 connection with the agreements between Spencer Rock and 15 Shoreside for the purchase of fuel and lubricant? 16 A I handled all the pricing, and I put together the 17 proposal for the project. 18 Q And approximately when was that, sir? 19 A 19 -- I guess it was spring -- actually winter of 20 1997, which would be, like, January or February. I don't 21 know the exact time, but approximate. 22 Q Tell me, what does Shoreside do? 23 A We're a wholesale/retail fuel company. We actually 24 sell fuel to gas stations, construction companies, heating 25 fuel to residential customers. We sell lubricant</p>	<p style="text-align: right;">Page 9</p> <p>1 number starts at page two at the top; do you see that, 2 sir? 3 A Uh-huh. 4 Q Could you turn to I guess what would be described -- 5 or what would be fax number page 19 on this. There's no 6 real rhyme or reason to this. Specifically what I'd like 7 to turn your attention to is a Marathon Fuel Service 8 credit application? 9 A Okay. 10 Q And I believe -- if you would turn to the subsequent 11 page. Is that the first page of the application? 12 A Yes, that is correct. Page 18. 13 Q And then did you participate in the preparation of 14 this credit agreement? 15 A No, I did not. 16 Q Do you know the circumstances surrounding the 17 preparation of this credit agreement? 18 A And I should say, I guess my involvement -- I may 19 have given them a copy of our credit application -- 20 Q Okay. 21 A -- but I didn't play a part in approval. And the 22 process is it goes to our controller and thereby gets 23 approved also by the president and owner of the company. 24 Q Was this credit application approved? 25 A Yes, I believe it was.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q And there was a credit application for Spencer Rock 2 Products, Inc.?</p> <p>3 A That is correct.</p> <p>4 MR. SEWRIGHT: Can we go off the record for a 5 moment?</p> <p>6 (Off record.)</p> <p>7 BY MR. MACHETANZ:</p> <p>8 Q I was rolling then and now I've forgotten where I 9 was.</p> <p>10 Okay. This application was provided by Spencer 11 Rock Products, Inc., to you. And what is the underlying 12 information that Shoreside relies upon in determining 13 whether a credit application will be granted?</p> <p>14 A They look at -- they have certain criteria that they 15 look at as far as specific credit ratings. We do credit 16 reports, credit background checks, use the information 17 that they provide, amongst other references that they also 18 provide.</p> <p>19 Q Did Nugget play any role in the application, 20 consideration, or agreement to this credit application?</p> <p>21 A To my knowledge, they didn't. But Nugget had a 22 separate credit app -- application.</p> <p>23 Q Are you aware of any services -- do you provide 24 services and goods or goods only?</p> <p>25 A We call it service. We of course, like anything, any</p>	<p style="text-align: right;">Page 12</p> <p>1 location of the mine, how the fuel cars get there, how 2 they're picked up, and all of that.</p> <p>3 A After the order is placed -- the customer has placed 4 their order -- we then go ahead and order the fuel in a 5 tank car, which is a rail car. And we will have the 6 railroad deliver it to this spot; in this case it was the 7 Spencer pit.</p> <p>8 And the railroad takes care of the dispatching; 9 they coordinate it with Spencer. And from there our hands 10 are free from it. We don't do anything with -- as far as, 11 you know, how long their offload time is. It's within 12 their time frame to get it off-loaded. And then as soon 13 as its done, we do get notified by the customer, and then 14 we will release that car to the railroad.</p> <p>15 Q Now, explain to me how a fuel car works. Does the 16 car itself remain at the location or is it -- is the tank 17 off-loaded from the rail car?</p> <p>18 A The tank -- actually, the rail car stays on location; 19 it's a fixed unit. So it actually stays in place on the 20 tracks.</p> <p>21 Q So this traveling tank, I take it there's some sort 22 of spur or little off-shoot of track where it rests while 23 it's being used?</p> <p>24 A Yes, I believe so. Spencer has their own siding. 25 It's call the Spencer siding.</p>
<p style="text-align: right;">Page 11</p> <p>1 delivery, you have to have service to back it up. But we 2 do provide goods along with the service.</p> <p>3 Q So essentially what you do is you provide fuel and, 4 as part of the provision of fuel, you deliver the fuel --</p> <p>5 A That is true.</p> <p>6 Q -- or the lubricants or whatever to the location?</p> <p>7 A That is correct.</p> <p>8 Q Now, subsequent to the execution of this agreement, 9 did Spencer Rock purchase any goods from Shoreside prior 10 to the Homer Spit project?</p> <p>11 A Yes, they did.</p> <p>12 Q Do you have in your mind an estimation of the 13 approximate amount of goods purchased by Spencer Rock from 14 Shoreside prior to the Homer Spit project?</p> <p>15 A I don't have that number. I'd have to go back and 16 look what that number was. I couldn't give you an exact 17 dollar or even a -- try to hit a ball park.</p> <p>18 Q Any sort of range of magnitude you could give?</p> <p>19 A It was several thousand dollars. I know that.</p> <p>20 It wasn't, you know, a hundred dollars. Yeah.</p> <p>21 Q That's good enough.</p> <p>22 As part of that purchase, would they purchase 23 fuel in rail cars?</p> <p>24 A Yes, they did.</p> <p>25 Q Explain to me how that works. Specifically at the</p>	<p style="text-align: right;">Page 13</p> <p>1 Q And then, when the tank is emptied or is of no 2 further use to Spencer, how do you pick it up and take it 3 away? Explain that to me.</p> <p>4 A Yeah. That's what I was mentioning. I said earlier 5 the railroad actually will come pick it up after we give 6 them notice that the car has been emptied.</p> <p>7 Spencer Rock also can notify the railroad as 8 well that the car has been emptied or whoever customer we 9 have can actually notify the railroad themselves and send 10 them a release that the tank is empty and ready to be sent 11 back to the refinery.</p> <p>12 Q Is there anything that would preclude you, after you 13 have delivered the tank, from taking back the tank before 14 it is empty?</p> <p>15 A Yes. If a customer didn't use all the fuel, it can 16 be shipped back to our facility, and we have pumped off 17 the remaining product and given credit back to the 18 customer for fuel not used.</p> <p>19 Q Now, when this credit agreement was executed, am I 20 correct that Spencer was to pay all invoices within 30 21 days of date of invoice unless specified?</p> <p>22 A I believe that's what it says on the credit app.</p> <p>23 Q Was anything modified about that? In other words, 24 was the 30-day payment from invoice modified at all?</p> <p>25 A Not to my knowledge.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q Was it your experience that Spencer met its 30-day 2 payment obligations up to the spit project? 3 A Yes, I believe so. 4 Q Explain to me -- when it says to pay all invoices 5 within 30 days of date of invoice, explain to me 6 Shoreside's invoicing procedure. 7 A Generally, our procedure is to invoice the customer 8 in a monthly period from the first of the month through 9 the 31st of the month. And at the 1st of the following 10 month we will send out a statement to the customer for 11 full payment. 12 And generally we do give a grace period. It can 13 be within, you know, 30 days past the 1st that we can go 14 up to, prior to seeking further action. 15 Q Let me see if I understand, then. So your March -- 16 for services that would be rendered in March of, say, '97, 17 those services would be aggregated and sent out in an 18 invoice on or about April 1st, correct? 19 A Correct. 20 Q The customer would then have 30 days in which to pay 21 that? 22 A That's correct. And I just wanted to clarify that 23 too, unless there was some special terms, you know, for 24 the specific invoice, you know, or specific arrangement. 25 Q You're not aware of any special terms for Spencer at</p>	<p style="text-align: right;">Page 16</p> <p>1 of the accounting clerks contact an individual for an 2 overdue payment. 3 Q Let's turn now to the Homer Spit project itself. 4 Tell me how Shoreside became involved in that project. 5 A We became involved in the project when we were 6 contacted to supply fuel for the project from Spencer Rock 7 and Nugget Construction. We provided fuel and lube for 8 the Spencer pit rock quarry operation and also provided 9 fuel for the tug boats that Nugget was using to haul the 10 rock from Seward to Homer. 11 Q Let's break those down separately. Who contacted you 12 about providing fuel for -- initially -- for the Spencer 13 pit? 14 A Well, initially Bob LaPore was one of the contacts. 15 And then there was also an individual by the name of Randy 16 Randolph that I spoke with also. Both those individuals I 17 talked with. 18 Q For the Spencer pit? 19 A Yeah, that's correct. 20 Q Who did you understand at the time -- when did these 21 contacts take place? 22 A For this project -- this would be the winter of 23 '96-97 -- it would be either -- maybe that fall. I don't 24 know specifically the exact time, but it would be 25 someplace in that window of time of winter of '96-97.</p>
<p style="text-align: right;">Page 15</p> <p>1 any point; are you? 2 A No, as far as specific terms, I'm not at this point. 3 Q So the March bills would be sent out in April. And 4 you would, per the terms of your agreement, expect payment 5 May 1st? 6 A Correct. If that's our normal practice. 7 Q Is that your normal practice? 8 A That's normal practice, correct. 9 Q And under your normal practice, if you don't receive 10 payment by May 1st -- in other words, it's beyond 30 days 11 due -- what do you do then? 12 A The finance department will start making phone calls 13 and further pursue the customer for payment and take more 14 specific direct action. 15 Q Do you have some sort of tickler system or 16 computerized system that notifies you when an invoice is 17 more than 30 days past due? 18 A Yes. 19 Q Who was responsible, during the period of the Homer 20 Spit project, for speaking with the customer if an invoice 21 was more than 30 days past due? 22 A Ron Neibrugge was our controller at the time. He 23 oversees that department. And I don't know specifically 24 at the time if he would have contacted them personally. 25 It would have been possibly him or he would have had one</p>	<p style="text-align: right;">Page 17</p> <p>1 Q And at the time of this contact, who did you 2 understand you would be providing fuel to at the Spencer 3 pit? 4 A For the Spencer pit project, Spencer Rock was 5 supposedly going to be doing rock work out there at the 6 quarry, and that's who we'd be delivering the fuel to for 7 this initial part of the project. 8 Q Who did you understand would be paying for the fuel 9 delivered at the Spencer Rock quarry? 10 A At the time, Spencer Rock was the company that we 11 were billing the invoices to. But we did know that Nugget 12 Construction was the general contractor. 13 Q During the initial contact for the delivery of 14 rock -- or the delivery of fuel to the quarry, did 15 Mr. LaPore or Mr. Randolph ever indicate that Nugget was 16 going to guarantee payment of the billings to Spencer Rock 17 for the fuel? 18 A The only thing that was mentioned about Nugget's 19 payment was when Bob LaPore said he was getting paid by 20 Nugget to pay for his -- for the portion of fuel -- he'd 21 be paying directly -- being paid directly by Nugget. 22 Q So you understood that you would be supplying fuel to 23 Spencer, who would be supplying rock to Nugget? 24 A Well, we didn't feel -- as supplier, we felt he was a 25 contractor, a subcontractor for the project, and that it</p>

<p style="text-align: right;">Page 18</p> <p>1 was a bonded project.</p> <p>2 Q That was significant to you?</p> <p>3 A Maybe not as much at the time as it is now, but we</p> <p>4 definitely recognized that any job, especially a federal</p> <p>5 job, that they are bonded projects.</p> <p>6 Q And was it fair to say that, when you learned that</p> <p>7 this was -- at the time you understood this was a federal</p> <p>8 project, did that have any significance on your decision</p> <p>9 to extend credit at that time or is that something that's</p> <p>10 simply become more important to you once Spencer ceased to</p> <p>11 pay your bills?</p> <p>12 A Both companies, Nugget and Spencer, both had credit</p> <p>13 at the time before this project, so that wasn't a</p> <p>14 decision. That didn't play any part, you know, in the</p> <p>15 decision.</p> <p>16 Q The bonded nature of the project?</p> <p>17 A I should say that wouldn't be a decision because they</p> <p>18 already had established credit, so that wouldn't be</p> <p>19 necessary at that time. Although, you know, we certainly</p> <p>20 view those projects in a different light.</p> <p>21 Q Now?</p> <p>22 A Uh-huh.</p> <p>23 Q Hindsight. Okay.</p> <p>24 So at the time of the decision to provide fuel</p> <p>25 to the Spencer quarry, with respect to that provision of</p>	<p style="text-align: right;">Page 20</p> <p>1 you exactly who it was that negotiated that.</p> <p>2 Q Let's talk about the conversations with LaPore and</p> <p>3 Randolph relating to the provision of fuel at the Spencer</p> <p>4 quarry. Did you participate in those conversations?</p> <p>5 A The only time I participated is when they contacted</p> <p>6 me about fuel for the quarry.</p> <p>7 Q Can you describe for me those contacts.</p> <p>8 A The initial contacts, like I mentioned, that</p> <p>9 winter -- during the winter of '96-97 when we got the</p> <p>10 phone calls regarding some price quotes for fuel for the</p> <p>11 project; I believe they were bidding on the project at the</p> <p>12 time. And I had conversations with Randy Randolph. I</p> <p>13 don't know how many, but they were over the phone, for</p> <p>14 fuel prices for the Spencer pit project.</p> <p>15 And Bob LaPore, I think my first contact with</p> <p>16 him about this specific project was he came into town and</p> <p>17 I met with him at the office as well and discussed fuel</p> <p>18 prices and facilitating supplying fuel for the project.</p> <p>19 Q And then you offered -- you provided quotes for fuel</p> <p>20 for Spencer; is that correct?</p> <p>21 A That's correct.</p> <p>22 Q Were those reduced to a written document?</p> <p>23 A I can't recall if actually that was on a faxed</p> <p>24 document that we quoted it to him or quoted him over the</p> <p>25 phone.</p>
<p style="text-align: right;">Page 19</p> <p>1 fuel, there was no mention of Nugget other than Spencer</p> <p>2 was being paid by Nugget. And Mr. LaPore told you that?</p> <p>3 MR. SHAMBUREK: I was just going to say, I think</p> <p>4 it's a compound question. Object to form. But go ahead.</p> <p>5 THE WITNESS: I guess I'm trying to figure out</p> <p>6 how to answer that. Of course Nugget's name was brought</p> <p>7 up quite a bit, you know, through this whole project. So</p> <p>8 specifically to say -- they weren't mentioned. But as far</p> <p>9 as payment, there was not a mention that Nugget's going to</p> <p>10 pay the fuel bill.</p> <p>11 BY MR. MACHETANZ:</p> <p>12 Q Now, there was a separate provision of fuel for the</p> <p>13 Nugget barge; is that correct?</p> <p>14 A "Separate provision" meaning --</p> <p>15 Q In other words, you had a separate agreement,</p> <p>16 separate and apart with Nugget, to provide fuel for the</p> <p>17 Nugget barge?</p> <p>18 A It wasn't Spencer Rock that was paying for the fuel.</p> <p>19 Q Exactly.</p> <p>20 A It was Nugget.</p> <p>21 Q And who contacted you at Nugget regarding payment for</p> <p>22 the fuel -- or the provision of fuel for the Nugget barge?</p> <p>23 A I don't know specifically who that contact was for</p> <p>24 the barge itself. I know we had a lot of dealings with</p> <p>25 Randy Randolph for the project, and I just couldn't tell</p>	<p style="text-align: right;">Page 21</p> <p>1 Q It may be that it was simply an oral quote, then?</p> <p>2 A That's correct. It could have been.</p> <p>3 I did at one time -- I know I did have a quote,</p> <p>4 a written quote, but I don't know if it was specifically</p> <p>5 for this project or not.</p> <p>6 Q And then, assuming it's not in writing, how do you</p> <p>7 remember then the proper price to charge for your fuel?</p> <p>8 Because I imagine you're pretty busy.</p> <p>9 A Exactly. Right. At the time in -- here's the</p> <p>10 situation. If -- fuel fluctuates like anything, so we can</p> <p>11 gave them a price based on today; we can't guarantee them</p> <p>12 that price, you know, if they're looking at a price</p> <p>13 estimate four months from now. As you are well aware,</p> <p>14 probably filling up your car, it's pretty hard to</p> <p>15 determine what the price is out there.</p> <p>16 If we did quote a price to them on a verbal</p> <p>17 quote, I could have possibly -- I would have put those in</p> <p>18 notes someplace. And then, at the time, we will give an</p> <p>19 estimate and, prior to them getting the fuel, we'll</p> <p>20 actually lock in that price prior to them taking delivery</p> <p>21 of the rail car quantity.</p> <p>22 Q How do you do that?</p> <p>23 A As soon as we order the fuel from the refinery, on</p> <p>24 that price on that day, that will be the price. So we'll</p> <p>25 know our cost; we can thereby charge the customer</p>

<p style="text-align: right;">Page 22</p> <p>1 accordingly.</p> <p>2 Q Now, in addition to providing -- and then did you</p> <p>3 thereafter begin to provide -- or did you subsequently</p> <p>4 begin to provide fuel to the Spencer quarry?</p> <p>5 A Yes, we did.</p> <p>6 Q Did you provide any other goods to Spencer in</p> <p>7 connection with this?</p> <p>8 A We provided just strictly lubricants, gasoline, and</p> <p>9 diesel fuel.</p> <p>10 Q Where did you provide that to?</p> <p>11 A Excuse me. Where?</p> <p>12 Q Yes, sir.</p> <p>13 A It went to the Spencer pit.</p> <p>14 Q Were any of your goods and services provided in</p> <p>15 Seward itself?</p> <p>16 A Yes, there was some. It was a smaller portion, but</p> <p>17 there was some -- I believe some fueling of equipment in</p> <p>18 Seward. And possibly the delivery of some lubricant, some</p> <p>19 oil.</p> <p>20 Q Would we be able to determine -- I understand the</p> <p>21 concept of a fuel car. Now, with respect to the</p> <p>22 lubricants -- and you draw a distinction between</p> <p>23 lubricants, gas, and diesel fuel, I believe.</p> <p>24 The fuel car provides what, gasoline or diesel</p> <p>25 fuel?</p>	<p style="text-align: right;">Page 24</p> <p>1 phase. And during that initial phase, you believed that</p> <p>2 your agreement was with Spencer Rock to pay for those?</p> <p>3 A Our agreement was with -- Spencer Rock was the one we</p> <p>4 were providing fuel to; that is correct. We were still</p> <p>5 looking -- we view the project as a bonded job. It's a</p> <p>6 federal project. So we still know that there is still</p> <p>7 some coverage, as well.</p> <p>8 Q So in other words, in your mind, your contract was</p> <p>9 with Spencer Rock, but you had a bond in place in case</p> <p>10 Spencer Rock failed to pay you. Is that a fair summary?</p> <p>11 A I think that's a fair assessment.</p> <p>12 Q And during the period of time you were -- at some</p> <p>13 point you spoke with Randy Randolph, I believe.</p> <p>14 A Correct.</p> <p>15 Q And he indicated that Nugget was taking over for</p> <p>16 Spencer Rock and -- let's see -- and that all future fuel</p> <p>17 and lube purchases were to be billed directly to Nugget</p> <p>18 Construction; is that correct?</p> <p>19 A Yes. Correct.</p> <p>20 Q And he also told you that Nugget Construction would</p> <p>21 not pay for past purchases by Spencer Rock?</p> <p>22 A That's what he told me.</p> <p>23 Q Prior to that discussion, had you had any</p> <p>24 conversations with Nugget Construction where Nugget told</p> <p>25 you that they would pay for Spencer Rock's purchases of</p>
<p style="text-align: right;">Page 23</p> <p>1 A Diesel fuel, yeah.</p> <p>2 Q Okay. Separate gas and lube. How do they come out</p> <p>3 to the quarry?</p> <p>4 A We actually don't deliver them to the quarry. So</p> <p>5 they would have to take delivery themselves, the customer.</p> <p>6 So if the customer ordered it, they would have to pick it</p> <p>7 up in Seward or possibly even Anchorage.</p> <p>8 Q So they pick it up and then bring it out?</p> <p>9 A Correct.</p> <p>10 Q And all of the fuel, lubrication, and diesel fuel</p> <p>11 that was delivered to the Spencer rock quarry was billed</p> <p>12 to Spencer Rock; is that correct?</p> <p>13 A I believe all the invoices that we did were for</p> <p>14 Spencer Rock at that time.</p> <p>15 Q And that was because, at the time of the purchase and</p> <p>16 delivery of those services, you believed your contract was</p> <p>17 with Spencer Rock for those goods delivered to the quarry?</p> <p>18 A Wouldn't necessarily say it's a contract. We -- it's</p> <p>19 for the entire project. It was to provide rock to the</p> <p>20 Homer Spit project.</p> <p>21 Q But for purposes of you providing gas, diesel fuel,</p> <p>22 and lubricants, those goods that were provided were billed</p> <p>23 to Spencer Rock?</p> <p>24 A On the initial phase, that's correct.</p> <p>25 Q And that's what I want to talk about, the initial</p>	<p style="text-align: right;">Page 25</p> <p>1 fuel, gas, and lubrication?</p> <p>2 A I spoke with Randy Randolph. And I guess that was</p> <p>3 still -- the unclear question at the time was who he was</p> <p>4 representing, was whether he was with Spencer or whether</p> <p>5 he was with Nugget. Randy was the one I had the</p> <p>6 conversation with in particular to both of those contacts.</p> <p>7 Q My question though, sir, is simply this: At any</p> <p>8 point prior to your conversation identified in your</p> <p>9 affidavit with Randy Randolph, did anybody tell you that</p> <p>10 Nugget would pay for the goods provided by Shoreside to</p> <p>11 Spencer Rock?</p> <p>12 A Nobody from Nugget, other than Randy Randolph, that I</p> <p>13 had discussions with prior to --</p> <p>14 Q But when you had these discussions with Randy</p> <p>15 Randolph, did Randy Randolph ever indicate to you that</p> <p>16 Nugget would pay for those?</p> <p>17 A The one conversation I had when I asked him, he said</p> <p>18 that they wouldn't pay for them.</p> <p>19 Q And your other conversations with Randy Randolph,</p> <p>20 were they all in this pre-agreement phase?</p> <p>21 A No. I had many conversations -- or not many. I just</p> <p>22 had several conversations with him during the course of</p> <p>23 the project for supplying fuel.</p> <p>24 Q Now, after you started providing fuel, lubricants,</p> <p>25 gasoline to the project, did you have any discussions with</p>

<p style="text-align: right;">Page 26</p> <p>1 Bob LaPore about payment for the fuel, oil, and lube?</p> <p>2 A Prior to the Homer --</p> <p>3 Q Discussions --</p> <p>4 A Prior to the Homer project? I'm sorry to --</p> <p>5 Q My fault, not yours.</p> <p>6 A Okay.</p> <p>7 Q As I understand, you talked with Randy Randolph and</p> <p>8 Bob LaPore about reaching an agreement?</p> <p>9 A Right.</p> <p>10 Q Subsequent to that, you began to provide services</p> <p>11 to --</p> <p>12 A Correct.</p> <p>13 Q -- Spencer?</p> <p>14 My understanding is that Bob LaPore ordered --</p> <p>15 was it three tank cars of fuel oil from Shoreside?</p> <p>16 A I believe that's correct.</p> <p>17 Q One was in February, one was in April, and one was in</p> <p>18 May?</p> <p>19 A Uh-huh.</p> <p>20 Q Who would he order those tank cars from? Were you</p> <p>21 the individual?</p> <p>22 A Yes, that's correct.</p> <p>23 Q And when he ordered them, what did he tell you, just,</p> <p>24 we need another tank car?</p> <p>25 A That is correct.</p>	<p style="text-align: right;">Page 28</p> <p>1 A That's correct.</p> <p>2 Q And to the extent that you provided fuel to Spencer</p> <p>3 Rock pit on behalf of Nugget Construction after Shoreside</p> <p>4 declined to grant Spencer Rock, Shoreside had been paid</p> <p>5 for that in full by Nugget?</p> <p>6 A I believe so.</p> <p>7 Q Now, if you would turn to the statement. There are</p> <p>8 -- can you explain to me in your statement form what the</p> <p>9 reference number is?</p> <p>10 A The reference number is referencing a specific</p> <p>11 invoice for fuel delivery.</p> <p>12 Q And then the date, does that reference the date that</p> <p>13 the fuel was provided?</p> <p>14 A That is correct.</p> <p>15 Q Let me ask you, specific to the deliveries of tank</p> <p>16 cars -- and if you look at page -- turn back to Exhibit 1,</p> <p>17 if you could, please, sir. Exhibit 1, sir. And I'm</p> <p>18 looking at two invoices. I believe they're the invoices</p> <p>19 for the fuel cars.</p> <p>20 A There. That is correct.</p> <p>21 Q Now, there's a reference here to 5/21/97 and 4/8/97;</p> <p>22 do you see that?</p> <p>23 A Yes, I do.</p> <p>24 Q Does 5/21/97 reflect the actual date that the car is</p> <p>25 delivered to the site and dropped off or is that the date</p>
<p style="text-align: right;">Page 27</p> <p>1 Q At any point -- did you have other conversations with</p> <p>2 Bob LaPore during the period of time that Shoreside was</p> <p>3 providing fuel, lube, and -- well, fuel and lube to</p> <p>4 Spencer Rock Products?</p> <p>5 A Yes, I did.</p> <p>6 Q In any of those conversations, did you discuss with</p> <p>7 Bob LaPore payment for that or that he had overdue bills?</p> <p>8 A I can't recall the exact date that I had my first</p> <p>9 discussion with him on the overdue payment part.</p> <p>10 And also Ron Neibrugge might have had some</p> <p>11 contacts with him as well, or through our accounting</p> <p>12 department. I'm not sure of the exact date, if that was</p> <p>13 prior to Nugget taking over the pit or not.</p> <p>14 MR. MACHETANZ: Let me mark this as Exhibit 2,</p> <p>15 please.</p> <p>16 (Exhibit 2 marked.)</p> <p>17 BY MR. MACHETANZ:</p> <p>18 Q Handing you Exhibit 2, can you identify that, sir?</p> <p>19 A Yes, I can.</p> <p>20 Q What is it, sir?</p> <p>21 A It's a letter to Jane Poling with USF&G regarding a</p> <p>22 proof of claim form for the Homer Spit project.</p> <p>23 Q Now, this indicates -- your proof of claim is for</p> <p>24 goods you provided to Spencer Rock which were unpaid; is</p> <p>25 that correct?</p>	<p style="text-align: right;">Page 29</p> <p>1 that the order is placed and then you set in motion</p> <p>2 whatever it is you have to do with the railroad?</p> <p>3 A That is the date that actually the car was filled and</p> <p>4 then ready for shipment to the Spencer quarry.</p> <p>5 Q Do you know when the car -- that's the date the car</p> <p>6 was filled. Do you know when in fact the car actually</p> <p>7 arrived at the Spencer quarry?</p> <p>8 A I don't have that specific date, but the railroad</p> <p>9 documentation would show that.</p> <p>10 Q Typically, how long does it take after the car is</p> <p>11 filled for the car to be delivered to the Spencer quarry?</p> <p>12 A Generally it would be within a -- probably a 10-day</p> <p>13 period.</p> <p>14 Q Ten-day period. Okay.</p> <p>15 How would we be able to determine specifically</p> <p>16 when this tank was delivered to the Spencer quarry?</p> <p>17 A We would have to look at the railroad dispatch. They</p> <p>18 would actually have a bill of lading that would show that</p> <p>19 date.</p> <p>20 Q Would you have that in your files?</p> <p>21 A We possibly would.</p> <p>22 Q Now, I see -- turning back to Exhibit 2 -- I see two</p> <p>23 rather large charges for tank cars. Are the remaining</p> <p>24 amounts that we see here fuel or lubricants that were</p> <p>25 purchased in town and sent out to -- that Spencer Rock</p>

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1 Products would have to purchase in town?

2 A That's correct. I'm not sure which ones specifically

3 or if we put some fuel into some of their equipment

4 directly in Seward. Yeah.

5 MR. MACHETANZ: Let's mark this as Exhibit 3.

6 (Exhibit 3 marked.)

7 BY MR. MACHETANZ:

8 Q Handing you Exhibit 3, do you recognize that, sir?

9 A Yes, I do.

10 Q What is it?

11 A They're invoices for fuel billed to Spencer Rock.

12 Q Do you recognize the signature -- starting at the

13 second page, that's M -- it looks like MO or -- do you

14 know who that is?

15 A I don't. I could take a guess that his name is Mark,

16 a fellow that worked for Spencer.

17 Q What did Mark do for Spencer?

18 A I think -- I believe he was one of the -- actually, I

19 couldn't tell you exactly what he did. But he just worked

20 for Spencer Rock in the Seward area, operating some

21 equipment.

22 Q Mark Jones? I'm basing that on -- I look at Nugget

23 009138 and it looks like Jones is the one legible --

24 that's the one --

25 A Yeah, right. Right. Exactly.

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1 MR. SHAMBUREK: Which page?

2 MR. MACHETANZ: 009141. It appears that Mr.

3 Jones let his guard down once and made a legible

4 signature.

5 MR. VIERGUTZ: As well on 9130, you can see it

6 as well.

7 BY MR. MACHETANZ:

8 Q So we see signatures from Mr. Jones and Mr. LaPore;

9 is that correct?

10 A That is correct. And I'm just not sure on the Mark,

11 if that's the same Mark. And I can't even actually

12 remember quite his name. And, unfortunately, he's not

13 with us anymore.

14 Q You mean he's passed away?

15 A Yeah.

16 Q Now, in connection with these, I see one of the tanks

17 was sent out on April 8th for \$21,503 and there were

18 additional charges for goods during the month of April; is

19 that correct?

20 A That is correct.

21 Q So the goods that were provided in April would have

22 been billed to Spencer on or shortly after May 1st; am I

23 correct?

24 A For their purchases, that is correct.

25 Q And so, as of June 1, under the agreement, the April

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1 billings would have been past due; is that fair?

2 A That is correct.

3 Q Now, as of June 1, what steps did you take to

4 determine what -- or when you were going to get paid by

5 Spencer for the April invoices?

6 A I know there were some conversations. I personally

7 had a couple conversations with Bob LaPore and our

8 accounting staff as well -- that we had several

9 discussions on getting payment. And at the time, Bob

10 LaPore said he hadn't been paid by Nugget and was awaiting

11 payment from Nugget.

12 Q So Bob LaPore said he hadn't been paid?

13 A Correct.

14 Q Now, did he tell you that he was going to pay you?

15 A Yes, he did.

16 Q How soon after the first did you have these

17 discussions with Bob LaPore?

18 A I couldn't tell you exactly the day, but it was

19 within -- I'm sure I talked to him within probably the

20 first week of the month.

21 Q And did you keep any notes of your conversations with

22 Bob LaPore?

23 A Any notes I have relating to that should have been

24 provided.

25 Q Is it your habit -- is it your practice to keep notes

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1 of your conversations regarding debt collection?

2 A I don't get specifically involved in the debt

3 collection on a daily basis.

4 Q Well, for past due accounts, is it typical for you to

5 keep notes of your telephone conversations?

6 A I personally try to keep some notes on some of my

7 conversations, not all of them.

8 Q In reviewing your files in preparation for this

9 deposition, or at any point during this litigation, have

10 you reviewed any notes of conversations with Bob LaPore

11 concerning a past due account in June of 1997?

12 A I don't think I've seen anything specifically

13 relating to that.

14 Q You believe that your conversations with Bob LaPore

15 were in the first week. You had at least one. Tell me

16 the follow-up conversations with Bob LaPore.

17 A The follow-up conversations -- you know, like I

18 mentioned, I did have several conversations with him. But

19 I don't know specifically if it was relating to the back

20 payments or the invoices. And then also our accounting

21 department would have had, I'm sure, several conversations

22 with him as well.

23 Q Who specifically?

24 A I couldn't tell you if it was Ron himself or again --

25 Ron Neibrugge -- or possibly one of his accounting staff.

<p style="text-align: right;">Page 34</p> <p>1 Q Was a \$25,000 -- let's say \$22,000 in past due 2 amounts be considered a significant past due account to 3 Shoreside? 4 A Yes. 5 Q So that would demand close scrutiny, I imagine? 6 A Yes. 7 Q And then was there also concern given the fact, as of 8 June 1st, you had this overdue account and you'd just 9 provided another \$20,000 worth of fuel to -- 20,000 10 plus -- to Spencer Rock Products? 11 A Could you say that again? 12 Q Okay. As of June 1 -- 13 A Right. 14 Q -- you had an outstanding debt of around 22, \$23,000? 15 A Correct. 16 Q In May you continued to charge for additional lube 17 materials? 18 A Correct. 19 Q And you also had filled an order for about \$21,000 20 for fuel in another tank car? 21 A Correct. 22 Q So by that point he's approaching 45,000? 23 A Correct. 24 Q And as of about June 1st, the tank car was probably 25 being delivered or close to delivery or had just been</p>	<p style="text-align: right;">Page 36</p> <p>1 Q Can you show me that, because I'm obviously not 2 attentive. Ah, amount of approved credit, 20,000? 3 A Correct. 4 Q So you provided -- let me see if I understand this. 5 As of the time you provided the second fuel car to 6 Spencer, Mr. LaPore had exceeded his credit limit with 7 Shoreside? 8 A It would appear, at that time, that's correct. 9 Q And because you were concerned about that before you 10 filled that second order, you spoke with Mr. LaPore and 11 said, you're over your limit, you haven't paid us, what 12 are you going to do. Is that a fair statement? 13 A I don't know what the exact conversation was, you 14 know, at the time, how that went, but I'm certain that 15 there was some conversation relating to the past due 16 amount. 17 Q And Mr. LaPore told Shoreside that he was waiting for 18 payment from Nugget and, when he got that payment, he 19 would pay Shoreside; is that -- 20 A That's correct, to my knowledge. 21 Q At that time, did your call Nugget to confirm this 22 was the case or anything? 23 A I specifically didn't. I don't know if Ron did 24 himself. 25 Q Based on Mr. LaPore's statement to you, you then went</p>
<p style="text-align: right;">Page 35</p> <p>1 delivered at the Spencer quarry; is that correct? 2 A Correct. 3 Q And obviously, if \$25,000 was a large amount of money 4 for Shoreside, then 45,000 was a real large amount of 5 money? 6 A That's correct. 7 Q So when did you contact Nugget about this? 8 A Well, specifically -- and one of the reasons why I 9 got -- I believe that it went over the credit limit amount 10 to get that high was that there was a conversation with 11 Bob LaPore about payment for the prior car. He was going 12 to receive some money from Nugget within the following 10 13 days or two weeks; I don't know the specific time frame. 14 But he was promised some money from Nugget to get those 15 paid and had assured us that we would be paid for it. So, 16 thereby, I believe that's when we released that second 17 car, or that particular car of fuel. 18 Q So that car may have been held for a while until you 19 had a chance to talk to Bob LaPore and get his assurances? 20 A I don't think we held the car. But before we would 21 place an order, correct, then we would have talked to him. 22 Q So let me see if I understand this. What was 23 Spencer's credit limit? 24 A I believe it was 20,000. It's under the -- it's 25 written on the credit application.</p>	<p style="text-align: right;">Page 37</p> <p>1 and released the car to Mr. LaPore? 2 A We did release the car to Spencer pit. 3 Q Without receiving any payment from Mr. LaPore -- 4 A I believe that was the case. 5 Q -- and even though he was above his credit limit? 6 A Yes. 7 Q Now, by June 1st, he's more than twice above his 8 credit limit; is that correct? 9 A That is correct, it would appear, from the limit on 10 the credit application. And granted, that was back in 11 '95, so there could have been some increase on that as 12 well. 13 Q Are you aware of anything indicating an increase 14 here? 15 A I haven't seen anything. 16 Q Now, continuing on, comes to the 1st of the month and 17 you haven't been paid. And Mr. LaPore again tells you, 18 still haven't been paid by Nugget; when I get paid, you'll 19 get paid; is that correct? 20 A I'm not sure of the exact wording he used, but it was 21 definitely he was waiting on some payment from Nugget to 22 get paid. 23 Q And these contacts were in the first week of June? 24 A Thereabouts, yeah. 25 Q So when do you finally contact Nugget?</p>

<p style="text-align: right;">Page 38</p> <p>1 A You know, they actually may have been some contacts 2 with Nugget in and around that time. I know I had, like I 3 mentioned, several conversations with Randy Randolph, who 4 I didn't know was working with Nugget until he actually 5 provided me that he was specifically with Nugget. I 6 thought he was Spencer Rock involvement. But he was 7 essentially stepping in as a Nugget representative. And I 8 had several conversations with him, and he was speaking 9 poorly about Spencer and -- 10 Q Did that cause you concern, that he was speaking 11 poorly about Spencer? Was he telling you that he had 12 concerns about Spencer's performance? 13 A He was -- he had some specific comments about Bob 14 LaPore, but I can't recall exactly what they were. But 15 since he was a partner in Spencer, I couldn't understand 16 why. 17 Q How did you know he was a partner in Spencer? 18 A Well, this is what I was told by Bob LaPore. 19 Q Okay. You were told that by Bob LaPore. 20 When were you told that? 21 A I don't have that exact time. And that was just in 22 conversation. I don't know that's a fact, but that's what 23 I was told, that he was a partner. 24 Q Did you ever ask Randy if he was a partner of Spencer 25 Rock Products?</p>	<p style="text-align: right;">Page 40</p> <p>1 as of the ordering of the second car. Spencer has not 2 been paid by Nugget, according to Bob LaPore? 3 A Correct. 4 Q Nugget is speaking poorly of Bob LaPore -- or Randy 5 Randolph is saying that Bob LaPore is not doing a good job 6 in the Spencer quarry; is that correct? 7 A Said it was slow. 8 Q Nugget is actually providing equipment, according to 9 Randy Randolph, in the Spencer quarry as of that time? 10 A Uh-huh. That's correct. 11 Q You're aware of all of those facts, and you authorize 12 the shipment of the second \$20,000 fuel car? 13 A That's correct. 14 MR. SHAMBUREK: Can we take a break? 15 THE WITNESS: And, actually, I do need to go to 16 the bathroom. That would be nice. 17 MR. MACHETANZ: All right. Well, we aim to 18 please. Go right ahead. 19 (Recess taken.) 20 (Exhibit 4 marked.) 21 BY MR. MACHETANZ: 22 Q When you spoke with Mr. Randolph, and Mr. Randolph 23 indicated that Nugget was putting equipment into the 24 quarry to assist in the quarry operation, did you 25 understand that -- did Mr. Randolph tell you that Nugget</p>
<p style="text-align: right;">Page 39</p> <p>1 A No, I didn't. 2 Q Now, during this time that was Randy was speaking 3 poorly of Bob LaPore -- was that occurring in May, prior 4 to the delivery of the second shipment? 5 A I actually think it was sooner than that. And that's 6 when I believe Nugget actually stepped up with some 7 equipment to get involved in the project. 8 Q How did you know that Nugget stepped up to get 9 involved in the project? 10 A Because Randy had told me that they were placing some 11 equipment out there at the site to speed things up. 12 Q So let me see if -- so as of the time you filled the 13 order on May 21st, we -- let me see if the following facts 14 are true. Spencer is over its credit limit, correct? 15 A It's over what it says on here. And I don't know 16 specifically that that didn't get raised verbally. 17 Q You don't know if there's any raise of that? 18 A I don't know, yeah. 19 Q And you were concerned, I believe you testified, 20 about the fact that it appeared to be over his credit 21 limit; is that correct? 22 A It's definitely what it says on the credit 23 application. It would certainly trigger at least some 24 alert. 25 Q So it appears that Spencer is over its credit limit</p>	<p style="text-align: right;">Page 41</p> <p>1 was doing that for free? 2 A I didn't know what the arrangement was. 3 Q So you didn't know if -- are you familiar with the 4 term "backcharge"? 5 A I've heard it before. 6 Q What does the phrase "backcharge" mean to you? 7 A I'm going to assume it means to bill for something 8 done in the past. 9 Q Are you familiar with the terms as used in the 10 construction industry? 11 A Like I say, I've heard it used, but I don't know the 12 specifics of it. 13 Q For example, if a general contractor provides a 14 subcontractor with a piece of equipment and charges the 15 subcontractor for that piece of equipment, have you used 16 it -- heard it used in that context? 17 A I may have. 18 Q In other words, backcharging the subcontractor for 19 the use of an EX 750. 20 A Okay. 21 Q Now -- and you didn't know whether Nugget was 22 backcharging Spencer for free or -- was backcharging 23 Spencer for there services or was providing the equipment 24 for free; is that correct? 25 A I don't know the arrangement that they had.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q And that's not something you inquired into?</p> <p>2 A No.</p> <p>3 Q Now, when you agreed to provide the next rail car in</p> <p>4 May of '97, did the fact that this was a bonded job have</p> <p>5 any influence on that decision?</p> <p>6 A We definitely had some comfort that Nugget was the</p> <p>7 general contractor, and that it was a bonded job.</p> <p>8 Q What comfort did the -- I understand you receiving</p> <p>9 comfort from the fact that it was a bonded job.</p> <p>10 What comfort did you take from the fact that</p> <p>11 Nugget was the general contractor on the project?</p> <p>12 A We had some prior business dealings with them before,</p> <p>13 and we hadn't had any problems with them.</p> <p>14 Q They seemed like a stand-up company to you?</p> <p>15 A We didn't have any problems with them, yeah, from the</p> <p>16 one job we did prior to that.</p> <p>17 Q Now, given the facts that we discussed prior to the</p> <p>18 break and given the fact that you would be extending</p> <p>19 another 21 or \$22,000 in credit to LaPore for this next</p> <p>20 fuel shipment, when did you contact Nugget and tell them</p> <p>21 you were looking to them or their bond to pay for this</p> <p>22 credit if LaPore couldn't pay?</p> <p>23 A I didn't contact them. Ron Neibrugge, I believe it</p> <p>24 was, that contacted them.</p> <p>25 Q When did Mr. Neibrugge contact them?</p>	<p style="text-align: right;">Page 44</p> <p>1 conversation that somebody else in the company had and you</p> <p>2 have to present that to the individual. I think he's done</p> <p>3 a commendable job meeting his 30(b)(6) duties. I think</p> <p>4 you would have to agree that, to have him be able to</p> <p>5 testify as to when somebody made conversations during that</p> <p>6 period of time is beyond the realm of 30(b)(6).</p> <p>7 MR. MACHETANZ: Well, we may disagree about the</p> <p>8 scope of 30(b)(6).</p> <p>9 BY MR. MACHETANZ:</p> <p>10 Q Now could you please answer the question. You were</p> <p>11 able to contact Mr. Neibrugge before your deposition,</p> <p>12 correct?</p> <p>13 A Correct.</p> <p>14 Q And was there any time limit on the amount of time</p> <p>15 you could speak with Mr. Neibrugge?</p> <p>16 A Nobody gave me a time limit.</p> <p>17 Q How much time did you spend speaking with him?</p> <p>18 A Specifically about this case, only, like I mentioned</p> <p>19 earlier, less than -- no more than five minutes.</p> <p>20 Q Now, in connection with the conversation that you had</p> <p>21 with Randy Randolph, I believe, if we have Exhibit 4 in</p> <p>22 front of you -- right there (indicating) -- it says, "In</p> <p>23 June I received a phone call from Randy Randolph."</p> <p>24 Do you see that, sir?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 A I don't know the specific date when he contacted</p> <p>2 them, you know, by phone. I know we did have some</p> <p>3 correspondence with them.</p> <p>4 Q Was that before or after Randy Randolph contacted</p> <p>5 you?</p> <p>6 A I believe that was after Randy had contacted me.</p> <p>7 Q So you didn't initiate any conversations with Nugget</p> <p>8 about LaPore's financial situation until after Randy</p> <p>9 Randolph contacted you, that you were aware of?</p> <p>10 A That I am aware of. And I'm not going to say that</p> <p>11 they didn't -- that there wasn't some conversation prior</p> <p>12 to that. There could have been.</p> <p>13 Q But you don't know of any?</p> <p>14 A I don't know specifically of any instance.</p> <p>15 Q And you are the 30(b)(6) representative of Shoreside?</p> <p>16 A At this point. But -- and I do want to clarify that</p> <p>17 Ron Neibrugge, who's listed in here, was our controller</p> <p>18 for 10 years and, of course, I didn't handle the finance</p> <p>19 portion.</p> <p>20 Q And you were able to contact Mr. Neibrugge and</p> <p>21 discuss this before your deposition?</p> <p>22 MR. SHAMBUREK: I'm just going to have to</p> <p>23 object. These are very, very, very factually specific</p> <p>24 questions. He can talk about the corporation and its</p> <p>25 practices and whatnot. But you're asking about a</p>	<p style="text-align: right;">Page 45</p> <p>1 Q When in June?</p> <p>2 A I don't know the specific date. I would have put</p> <p>3 that in there if I knew.</p> <p>4 Q Well, given SRP's nonpayment as of June 1st and the</p> <p>5 fact that they had just given a 20,000 -- you had advanced</p> <p>6 another 20,000 for a fuel car, would it be fair to say it</p> <p>7 must have been early in June or you would have contacted</p> <p>8 him?</p> <p>9 A I'm assuming it would be early June. I can get the</p> <p>10 direct -- I'm certain I could find that date.</p> <p>11 Q How could you find the date?</p> <p>12 A If we look back through the records from when we</p> <p>13 started invoicing -- when they took over the direct</p> <p>14 project.</p> <p>15 Q The question I have, though, sir, is: As of June</p> <p>16 1st -- well, would it be fair to say that you would have</p> <p>17 contacted Nugget early in June if Nugget hadn't have</p> <p>18 contacted you, given the situation with Bob LaPore?</p> <p>19 MR. SHAMBUREK: Do you mean Spencer?</p> <p>20 MR. MACHETANZ: I mean Shoreside.</p> <p>21 BY MR. MACHETANZ:</p> <p>22 Q Would that be Shoreside's practice?</p> <p>23 A To contact a --</p> <p>24 Q The general contractor if the sub is over 30 days'</p> <p>25 past due and is more than twice its credit amount.</p>

<p style="text-align: right;">Page 46</p> <p>1 A It certainly could be -- we would certainly contact 2 them as probably a -- a very good possibility that we 3 could. 4 Q That would be a prudent commercial practice? 5 A It could. 6 Q Wouldn't it be? 7 A I just don't know specifically on this case, you 8 know, whether or not we did contact them or not. So I 9 can't, again, you know, speak for the controller. 10 Q Well, would it be fair to say that -- is it your 11 belief, sir, that the conversation with Randy Randolph 12 occurred in early June? 13 A About Nugget taking over the project? 14 Q Yes, sir. 15 A Yes. 16 Q Now, in that same conversation, Mr. Randolph stated 17 that Nugget would not pay for past purchases by Spencer 18 Rock. Do you see that in paragraph six? 19 A Yes, I do. 20 Q And that accurately narrates your conversation? 21 A Yes. 22 Q Now given that fact, and given -- given that fact, 23 what steps did you take to retrieve the \$21,000 fuel car 24 that you had sent to Spencer rock quarry in late May? 25 MR. SHAMBUREK: I'm going to just object because</p>	<p style="text-align: right;">Page 48</p> <p>1 next summary judgment motion and we'll determine whether 2 it's relevant or not. 3 BY MR. MACHETANZ: 4 Q Now, in response to that -- you had this fuel 5 delivered. Mr. Randolph told you Nugget wasn't going to 6 pay for past due Spencer Rock Products' purchases. And he 7 told you this, the best of your recollection, in early 8 June. 9 Why didn't you take any steps to retrieve the 10 fuel car? 11 A Again, to go back, you know, during that time, I 12 don't know exactly how much fuel was used. It was already 13 invoiced out. The fuel was there. We're not sure exactly 14 how much fuel was used out of that car. 15 And specifically, the project had to still 16 continue on, whether it be Nugget, Spencer, or whoever; 17 they're both within the box. We felt they're both -- it's 18 a bonded project. It's for a rock quarry on Homer Spit. 19 It's all going for the same purpose. It didn't matter, 20 you know, if it was Spencer or Nugget, and -- which one it 21 was; it was for the same project. 22 We just know that, when we look at that Homer 23 Spit -- which I drove by there. When I looked and seen 24 that rock down there, I know that every rock they got 25 there was with our fuel.</p>
<p style="text-align: right;">Page 47</p> <p>1 it assumes facts in evidence. He never stated that they 2 tried to retrieve the rail car. 3 BY MR. MACHETANZ: 4 Q Did you make any effort to attempt to retrieve the 5 rail car? 6 A No, I didn't. 7 Q Are you aware of anybody within Shoreside who tried 8 to retrieve the rail car? 9 A No. 10 Q Are you aware of anything that would have precluded 11 you retrieving that rail car? 12 A Not to my knowledge. 13 Q Now, that rail car was ordered by Bob LaPore of 14 Spencer Rock Products, correct? 15 A I believe so, yes. 16 MR. SHAMBUREK: Let me interpose just an 17 objection -- and then you can go on -- is that most of 18 these questions are irrelevant, but sometimes it's easier 19 just to allow somebody to inquire. The court had already 20 found that all of this fuel was used for the use and 21 benefit of the project. So to argue something to the 22 contrary seems like a stretch. Having made that 23 objection, that this analysis or this inquiry appears 24 irrelevant, why don't you go ahead and ask your questions. 25 MR. MACHETANZ: I will. And I will use it in my</p>	<p style="text-align: right;">Page 49</p> <p>1 Q But you could have had the railroad pick up the rail 2 car, bring it back, pumped it out, and offered a credit 3 for the unused fuel. There was nothing that precluded 4 Shoreside from doing that? 5 A Correct. 6 Q Now, I also see that -- when did you specifically cut 7 off credit to Spencer Rock Products? 8 A I believe it was -- I don't have the exact date in 9 June, but it's right in -- sometime here in June. 10 Q How do you notify your sales force or your stores or 11 your gas stations that Spencer is no longer entitled to 12 use credit? 13 A We'll verbally -- we can verbally or written notice. 14 Q Do you have any indication of when that verbal -- do 15 you have any firsthand knowledge of when that verbal or 16 written notice was provided? 17 A I don't. 18 Q Who would be responsible for providing that verbal or 19 written notice? 20 A Ron Neibrugge, our controller. 21 Q And you don't know when Mr. Neibrugge provided that 22 notice? 23 A I don't know when he did. 24 Q And you don't have any -- as you sit here today, you 25 don't recall any specific written documentation showing</p>

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1 that Spencer Rock Products -- you have not seen, to the
 2 best of your recollection, any written indication of when
 3 Spencer Rock Products' credit was cut off?
 4 A I haven't seen anything written, but we're a small
 5 company, you know; we're not a -- 500 employees. So
 6 easily, you know, a phone call, and two key people know,
 7 and it's a done -- you know, several people know, and it's
 8 a done deal.
 9 Q Do you have any recollection of any telephone
 10 messages or such indicating Spencer Rock Products' credit
 11 has been cut off?
 12 A I'm not sure of the time. You know, there was
 13 conversation about -- they certainly being cut off from
 14 credit, but I just can't recall the exact date. And
 15 again --
 16 Q Now, you had this conversation with Randy Randolph.
 17 What did you do after the conversation, with respect to
 18 Spencer Rock Products' credit?
 19 A I'm not sure if they continued to get fuel right, you
 20 know, within a couple days after that or if we withheld
 21 any future fuelings to them. I don't know. I actually
 22 don't know.
 23 Q You don't know when the directive to cut off credit
 24 to Spencer Rock Products came in relation to your
 25 discussion with Randy Randolph; is that correct?

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1 A I don't know the exact date.
 2 Q But in fact, as soon as you heard -- from Randy
 3 Randolph's statement, you made the decision not to
 4 extend --
 5 A No.
 6 MR. SHAMBUREK: That exceeds anything he's
 7 testified to.
 8 MR. MACHETANZ: I haven't finished my question
 9 yet. Why don't you let me finish my question and then you
 10 can pose an objection. And you can pose an objection to
 11 form. But simply these long dissertations about what your
 12 position is really isn't appropriate here, Steve.
 13 MR. SHAMBUREK: It's not a long dissertation.
 14 What you're doing is you're going over and over the same
 15 thing. You're saying here that, immediately after this
 16 conversation -- he's not even sure what the conversation
 17 is -- you made a decision. Ask him questions. Don't keep
 18 revising things and suggesting that he's previously
 19 testified to them. You can ask him questions about what
 20 he did and when, but you're summarizing it incorrectly and
 21 then asking another question.
 22 MR. MACHETANZ: Steve, I was going to ask a
 23 leading question. So why don't you shut up until the
 24 question is over. And then, if you have a legitimate
 25 objection, make it. Don't interrupt me.

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1 BY MR. MACHETANZ:
 2 Q Now, my question to you is: After you had this
 3 discussion with Randy Randolph, had you decided at that
 4 point that credit would be cut off to Spencer Rock
 5 Products?
 6 A I don't have the exact date that -- when we did cut
 7 off credit to Spencer Rock in front of me. And certainly
 8 I could find it, digging through the several boxes of
 9 paper. You know, this thing happened obviously, as you
 10 know, eight and a half years ago, almost nine years.
 11 That -- it may have happened prior to that --
 12 there may have been discussions. I know he was on very,
 13 very tight credit terms, but the promise that Nugget would
 14 pay was in the forefront of our mind, that we were assured
 15 that Nugget was going to pay him; we were going to be paid
 16 in full.
 17 Q Where did this promise from Nugget come from?
 18 A It came from Spencer Rock.
 19 Q Bob LaPore?
 20 A I believe so.
 21 Q Nugget at no point promised you they would pay you
 22 for Bob LaPore's credit; did they?
 23 A Not to my knowledge.
 24 Q Now, who was present for this discussion to put -- to
 25 cut off Bob LaPore's credit?

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1 A That would have been Ron Neibrugge and the president
 2 of the company, Kurt Lindsey, and myself.
 3 Q Do you know if there was any record kept of that
 4 discussion or decision?
 5 A No written record that I am aware of.
 6 Q Spencer continued to purchase on credit in June of
 7 '97; is that correct?
 8 A That is correct. Yes.
 9 Q And at the time they were purchasing on credit in
 10 June, they were two times over the credit limit depicted
 11 in their credit application, correct?
 12 A Yes, but there again, I want to restate that that
 13 credit application was a year and a half prior to this
 14 project. That's not a set-in-stone number. And that can
 15 be raised or rescinded, you know, prior to that.
 16 Q Have you seen any indication -- any written
 17 indication -- that the credit application limitation was
 18 of raised?
 19 A I haven't seen anything in writing on it, but that's
 20 not to say it hadn't been done verbally.
 21 Q Are you aware of any verbal discussions about that?
 22 A Obviously, we raised it. We gave him credit over his
 23 \$20,000 limit, so we did give -- we did raise his limit.
 24 Q When you made that decision to raise his limit, what
 25 additional financial information did you request from

<p style="text-align: right;">Page 54</p> <p>1 Spencer Rock Products?</p> <p>2 A I don't know if any particular that they requested</p> <p>3 from Spencer Rock. We just knew that it's a bonded job.</p> <p>4 Again, it was a bonded job, they were a subcontractor to</p> <p>5 Nugget, and that we would be paid in full.</p> <p>6 Q Are you aware of any financial investigation into</p> <p>7 Spencer Rock Products which was conducted prior to</p> <p>8 releasing the second tank car?</p> <p>9 A Not to my knowledge.</p> <p>10 Q Do you believe Nugget defrauded Shoreside?</p> <p>11 A Well, they haven't paid their bill, and we're out</p> <p>12 50-some thousand dollars that we haven't been paid for.</p> <p>13 Q Other than the fact that you haven't been paid</p> <p>14 \$50,000, can you explain to me why Shoreside believes it</p> <p>15 has been defrauded by Nugget?</p> <p>16 A They certainly didn't represent themselves with their</p> <p>17 subcontractors, using -- how do I say this? We felt it's</p> <p>18 pursuant for any contractor that's bonded that they will</p> <p>19 hold true to their payment, to seeing that this -- a job</p> <p>20 is done. And of course we have letters from the Army</p> <p>21 Corps of Engineers that states that we certainly should</p> <p>22 have been paid by the general contractor.</p> <p>23 Q What was it that specifically Nugget misrepresented</p> <p>24 to you -- as in Shoreside?</p> <p>25 A Payment.</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. SEWRIGHT: Continuing objection as to form</p> <p>2 of question.</p> <p>3 THE WITNESS: I'm not sure what you're driving</p> <p>4 at.</p> <p>5 BY MR. MACHETANZ:</p> <p>6 Q I want to know what specific facts support</p> <p>7 Shoreside's allegation that it has been defrauded, other</p> <p>8 than the fact that Nugget has not paid Shoreside for the</p> <p>9 amounts on the Spencer Rock Products quarry?</p> <p>10 A I don't think we'd be sitting here today -- if we had</p> <p>11 been paid, we wouldn't be sitting at this table right now.</p> <p>12 Q I think that's probably a fair statement.</p> <p>13 A Okay. Good.</p> <p>14 Q But my question is -- you understand you've made</p> <p>15 allegations of fraud and misrepresentation and all sorts</p> <p>16 of high crimes and misdemeanors.</p> <p>17 MR. SHAMBUREK: Now, I object there. It's not</p> <p>18 high crimes and misdemeanors.</p> <p>19 MR. SEWRIGHT: I'll join in the objection.</p> <p>20 MR. MACHETANZ: That question I will rephrase.</p> <p>21 MR. SEWRIGHT: There was no question there.</p> <p>22 BY MR. MACHETANZ:</p> <p>23 Q You've alleged that Nugget has defrauded Shoreside</p> <p>24 and that Nugget has misrepresented facts to Shoreside.</p> <p>25 And you've told me that the basis for that is that Nugget</p>
<p style="text-align: right;">Page 55</p> <p>1 Q And how did Nugget represent to you that they would</p> <p>2 pay you?</p> <p>3 A Again, it's a bonded job through their bond. And, as</p> <p>4 a general contractor, they have an obligation to all</p> <p>5 subcontractors to make sure we're paid in whole and in</p> <p>6 full.</p> <p>7 Q Assuming this was not a bonded job -- this was a</p> <p>8 private project, no bond was issued -- how in that</p> <p>9 scenario would you believe Nugget has defrauded Shoreside?</p> <p>10 A Of course, that's an assumption on your part.</p> <p>11 Q Absolutely. I want you to assume it for purposes of</p> <p>12 this --</p> <p>13 A And for me to assume that, too, Traeger, I'm -- each</p> <p>14 specific project or contract would be different, you know,</p> <p>15 looked at differently. You know, this was a bonded</p> <p>16 project; we felt very comfortable with it. We would</p> <p>17 certainly view that differently as a nonbonded project.</p> <p>18 Q Other than the fact that this was a bonded project</p> <p>19 and that you haven't been paid on a bonded project, how</p> <p>20 has Nugget defrauded you?</p> <p>21 MR. SEWRIGHT: Object to form.</p> <p>22 THE WITNESS: Again, by not paying.</p> <p>23 BY MR. MACHETANZ:</p> <p>24 Q Other than the fact that you have not been paid, how</p> <p>25 has Nugget been defrauded?</p>	<p style="text-align: right;">Page 57</p> <p>1 hasn't paid Shoreside.</p> <p>2 And I'm trying to determine: What are the</p> <p>3 misrepresentations or fraudulent acts you are complaining</p> <p>4 of other than the fact that Nugget hasn't paid Shoreside</p> <p>5 on a bonded project?</p> <p>6 MR. SEWRIGHT: Continuing objection to this line</p> <p>7 of questioning, as to form, and calling for legal</p> <p>8 conclusions.</p> <p>9 BY MR. MACHETANZ:</p> <p>10 Q You may answer.</p> <p>11 A Again, I'll go back to payment and what it's all</p> <p>12 about, and integrity and trust. You know, we put forth a</p> <p>13 lot of effort on our part to see this whole project</p> <p>14 through so they could commence and finish the Homer rock</p> <p>15 project. And I think we were a big part of that. And for</p> <p>16 the general contractor to not hold up to their obligation,</p> <p>17 that is a misrepresentation.</p> <p>18 Q And the obligation that you're talking about is your</p> <p>19 understanding of the obligation of the general contractor</p> <p>20 to pay a second-tier supplier --</p> <p>21 MR. SHAMBUREK: Again, it calls for a legal</p> <p>22 conclusion.</p> <p>23 BY MR. MACHETANZ:</p> <p>24 Q -- on a bonded project; is that a fair summary of</p> <p>25 your position?</p>

<p style="text-align: right;">Page 58</p> <p>1 A To pay a subcontractor?</p> <p>2 Q When you refer to "pay a subcontractor," who are you</p> <p>3 referring to?</p> <p>4 A To -- us and Spencer.</p> <p>5 Q So you feel that Nugget had an obligation to pay you?</p> <p>6 A Yes.</p> <p>7 Q What do you believe Nugget had an obligation to</p> <p>8 provide to pay Spencer?</p> <p>9 A I'm not privy to all their financial dealings, but</p> <p>10 all's I know is that we were told Spencer would be paid by</p> <p>11 Nugget. They told us that they weren't paid; therefore,</p> <p>12 they didn't pay us.</p> <p>13 Q That was Bob LaPore?</p> <p>14 A Spencer Rock.</p> <p>15 Q Other than nonpayment to Shoreside, what actions by</p> <p>16 Nugget were taken in bad faith and/or were deliberate</p> <p>17 reckless, malicious, outrageous, and/or with reckless</p> <p>18 indifference to Shoreside's rights?</p> <p>19 MR. SEWRIGHT: Continuing objection as to form</p> <p>20 as previously stated.</p> <p>21 THE WITNESS: Well, again, if you didn't get</p> <p>22 paid for something, I think that all those could sum that</p> <p>23 up.</p> <p>24 BY MR. MACHETANZ:</p> <p>25 Q Other than the nonpayment, what other actions?</p>	<p style="text-align: right;">Page 60</p> <p>1 Do you know whether he did or didn't?</p> <p>2 A Yeah, I don't, Herb, if he had a conversation with a</p> <p>3 person. I do know there is correspondence, though.</p> <p>4 Q Right. And you sent this Exhibit 2 -- that's Ron,</p> <p>5 correct?</p> <p>6 A Correct. Yeah.</p> <p>7 Q And to your knowledge, did USF&G respond to this</p> <p>8 letter?</p> <p>9 MR. SHAMBUREK: Which exhibit?</p> <p>10 MR. VIERGUTZ: Exhibit 2.</p> <p>11 MR. SHAMBUREK: Exhibit 2.</p> <p>12 MR. SEWRIGHT: First page, right?</p> <p>13 THE WITNESS: I don't know about the response to</p> <p>14 that specific letter, or that they did actually respond</p> <p>15 back in writing or called.</p> <p>16 BY MR. VIERGUTZ:</p> <p>17 Q Do you have any recollection of seeing any</p> <p>18 correspondence to Shoreside from USF&G in your file?</p> <p>19 A I do have the letter of course that we sent, but I</p> <p>20 don't know about the correspondence back. That possibly</p> <p>21 could be, but I --</p> <p>22 Q Have you produced to your attorney all records of</p> <p>23 Shoreside?</p> <p>24 A Yes, we have.</p> <p>25 Q And how big is that? Is it a stack two inches or one</p>
<p style="text-align: right;">Page 59</p> <p>1 A I think there was many listed in previous hearings,</p> <p>2 too, and results that have been documented.</p> <p>3 Q I want your testimony, sir.</p> <p>4 A Again, you know, we just -- I feel, without getting</p> <p>5 into legal jargon, our -- we feel it's nonpayment.</p> <p>6 MR. MACHETANZ: Can we take about a</p> <p>7 three-minute break to see if I have any other questions.</p> <p>8 (Recess taken.)</p> <p>9 MR. MACHETANZ: Mr. Lechner, I have no further</p> <p>10 questions. Thank you for your time. Mr. Viergutz may</p> <p>11 have some questions, or other folks.</p> <p>12 EXAMINATION</p> <p>13 BY MR. VIERGUTZ:</p> <p>14 Q Good morning, Mr. Lechner.</p> <p>15 A Good morning.</p> <p>16 Q How are you?</p> <p>17 A Real good, thank you.</p> <p>18 Q Did you ever speak to anyone from USF&G?</p> <p>19 A I didn't.</p> <p>20 Q You did not?</p> <p>21 A I didn't.</p> <p>22 Q And did anyone from Shoreside, to your knowledge --</p> <p>23 A Ron Nelbrugge, I believe, had some discussion or</p> <p>24 correspondence with someone from USF&G.</p> <p>25 Q I'm going to ask you specifically about speaking.</p>	<p style="text-align: right;">Page 61</p> <p>1 inch or three boxes?</p> <p>2 A I do know we have a box in controller's office about</p> <p>3 that size (indicating) for documents, but that's just the</p> <p>4 ongoing case. As far as what we've turned over to our</p> <p>5 attorney, it's been everything that I believe has been</p> <p>6 presented --</p> <p>7 Q Do you --</p> <p>8 A -- in the case.</p> <p>9 Q I'm sorry. I didn't mean to interrupt you.</p> <p>10 You don't know -- without taking into</p> <p>11 consideration the pleadings or what's generated in this</p> <p>12 case, you don't know how big Shoreside's file is in and of</p> <p>13 itself?</p> <p>14 A I don't, specifically.</p> <p>15 Q You talked earlier about bills of lading from the</p> <p>16 railroad, that type of thing.</p> <p>17 Where would they be located?</p> <p>18 A Of course those would probably be -- if they were --</p> <p>19 they would be in that file if they were related</p> <p>20 specifically to this project. I don't know if we actually</p> <p>21 received those from the railroad, because we -- only on</p> <p>22 the car we would receive back -- if we received fuel back.</p> <p>23 Q Shoreside's amended complaint at paragraph 38 -- and</p> <p>24 I'll read it to you, if I could: "Claimant realleges and</p> <p>25 incorporates the other allegations herein. Upon</p>

<p style="text-align: right;">Page 62</p> <p>1 information and belief and subject to further evidence as 2 is provided by disclosure and in discovery, USF&G is also 3 liable to claimant under Alaska law for the bad faith 4 nonpayment, nonsettlement, and/or refusal to discuss 5 settlement of claimant's claims brought under the Miller 6 Act and Stateline herein of which USF&G was notified. 7 USF&G has repeatedly failed to address payment to the 8 claimant for the goods and services despite demand. 9 Claimant is entitled to recover such damages plus interest 10 and attorney fees from USF&G." And that's paragraph 38. 11 Is it your position that the nonpayment of your 12 invoices is the bad faith nonpayment that's referred to in 13 this paragraph? 14 MR. SEWRIGHT: Object as to form. 15 THE WITNESS: We do feel either way, either 16 through nonpayment by Nugget or USF&G, they're 17 similarly -- feel the same. 18 BY MR. VIERGUTZ: 19 Q And other than the nonpayment, has USF&G committed 20 any other act of bad faith that you're aware of? You 21 personally. 22 MR. SEWRIGHT: Continuing objection as to form 23 of the question. Also calls for legal conclusions. 24 THE WITNESS: It certainly -- as it relates to 25 this, we felt with all the disclosure, through everything</p>	<p style="text-align: right;">Page 64</p> <p>1 Q And you were here for the other depositions, Mapco 2 and North Star, correct? 3 A Yes, I was. 4 Q And you heard me ask the same questions I'm going to 5 ask you, that, if I sue you, you do not have to settle 6 that case; isn't that correct? 7 A It's, I guess, your prerogative. 8 Q And if you choose not to settle that case, that's 9 entirely your decision; isn't it? 10 MR. SEWRIGHT: Continuing objection as to form. 11 THE WITNESS: It certainly could be, yes. 12 BY MR. VIERGUTZ: 13 Q And if you choose not to discuss settlement with me, 14 is that also your choice? 15 A That could be, but that's not our choice. 16 Q In this case? 17 A Yes. 18 Q But it's my choice; is that correct? 19 A Yes, it can be your choice. 20 MR. VIERGUTZ: I have no further questions. 21 MR. MACHETANZ: Mike? 22 MR. SEWRIGHT: No. 23 MR. SHAMBUREK: I do have some questions. 24 EXAMINATION 25 BY MR. SHAMBUREK:</p>
<p style="text-align: right;">Page 63</p> <p>1 that's on the table, that there should have been more 2 representation by the bondholder if the general contractor 3 was not taking action. And with the information that we 4 had and what has been put in front of everyone, we 5 certainly felt and still feel that, through the acts of 6 some of the officers of Nugget Construction that were tied 7 in with Spencer Rock somehow through this port agreement, 8 we certainly felt that there is that issue, I guess. 9 BY MR. VIERGUTZ: 10 Q You're not aware personally of any communications 11 between USF&G and Nugget, correct? 12 A No. 13 Q You don't have any idea what communications existed 14 or didn't exist between those entities; is that correct? 15 A That is -- 16 MR. SHAMBUREK: I would just observe that all of 17 those documents were marked as privileged, so none of them 18 would be available. But he can answer from there. 19 THE WITNESS: No. 20 BY MR. VIERGUTZ: 21 Q And USF&G was not, to your knowledge, on site and on 22 the project; is that correct? 23 A That's correct. 24 Q So what they did not do properly is pay you? 25 A That is correct.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q You sent a letter to the Army Corps of Engineers and 2 stated that Shoreside hadn't been paid for the product, 3 correct? 4 A That is correct. 5 Q And you received a response or a copy of a response 6 from the Corps of Engineers to Nugget? 7 A That is correct. 8 Q Were you aware from that letter that the contract 9 between Nugget and the Corps of Engineers included a 10 provision that Nugget not ask for any future progress 11 payments unless all suppliers and subcontractors were 12 paid? 13 A That is correct. 14 Q And are you aware if Nugget made requests for 15 progress payments after that letter? 16 MR. MACHETANZ: Leading. Foundation. 17 THE WITNESS: Meaning that -- 18 BY MR. SHAMBUREK: 19 Q They requested payments from the Corps of Engineers 20 after you had made demand for payment? 21 MR. MACHETANZ: Same objection. 22 BY MR. SHAMBUREK: 23 Q You can answer. 24 A Could you repeat the first -- 25 Q Is it your understanding that Shoreside sent a letter</p>

<p style="text-align: right;">Page 66</p> <p>1 to the Corps of Engineers --</p> <p>2 A That is correct.</p> <p>3 Q -- stating that they hadn't been paid?</p> <p>4 A That's correct.</p> <p>5 Q Are you aware if Nugget Construction made requests</p> <p>6 for progress payments to the Corps of Engineers after that</p> <p>7 time?</p> <p>8 A Yes, they did.</p> <p>9 Q And they didn't make -- Nugget didn't make a payment</p> <p>10 to -- or all the payments to the suppliers and</p> <p>11 subcontractors?</p> <p>12 MR. MACHETANZ: Leading. Foundation.</p> <p>13 THE WITNESS: They didn't make a payment to us</p> <p>14 or Spencer Rock.</p> <p>15 BY MR. SHAMBUREK:</p> <p>16 Q Do you view that as an act of bad faith?</p> <p>17 A Yes, I do.</p> <p>18 Q And were you aware from your review of the pleadings</p> <p>19 if the defendants challenged whether or not this was a</p> <p>20 federal project?</p> <p>21 A Yes.</p> <p>22 Q Were you aware that this was a federal project?</p> <p>23 A Yes, I was.</p> <p>24 Q And do you view that as an act of bad faith?</p> <p>25 A Yes, I do.</p>	<p style="text-align: right;">Page 68</p> <p>1 A He communicated to me in the spring of this project</p> <p>2 and also later into summer.</p> <p>3 Q And what was the nature of his communication?</p> <p>4 A It was regarding fueling for equipment for Spencer</p> <p>5 and for the whole entire project.</p> <p>6 Q Did he ever indicate that he ceased working for</p> <p>7 Spencer Rock Products?</p> <p>8 A There is no indication given to us that he was.</p> <p>9 Q And you had provided fuel to Nugget Construction</p> <p>10 prior to the spring of 1997?</p> <p>11 A That is correct.</p> <p>12 Q And that was pursuant to a credit application that</p> <p>13 Nugget Construction had filled out and provided to</p> <p>14 Shoreside Petroleum?</p> <p>15 A That is correct.</p> <p>16 Q And you hadn't had any problem with payment from</p> <p>17 Nugget at that time?</p> <p>18 A No, we hadn't.</p> <p>19 Q You had dealt with an entity previously called Trecon</p> <p>20 (ph); isn't that correct?</p> <p>21 A Yes, that's correct.</p> <p>22 Q And is it your understanding that Craig Pointer had</p> <p>23 an affiliation with Trecon?</p> <p>24 A That is correct.</p> <p>25 MR. MACHETANZ: Leading.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q And is it your understanding that Shoreside made a</p> <p>2 number of attempts to settle this case?</p> <p>3 A Many. Yes, I'm --</p> <p>4 MR. MACHETANZ: Leading. And also irrelevant.</p> <p>5 THE WITNESS: Yes, I was aware.</p> <p>6 BY MR. SHAMBUREK:</p> <p>7 Q And are you aware if USF&G actually ever initiated</p> <p>8 any settlement conferences with -- settlement conferences</p> <p>9 with Shoreside?</p> <p>10 MR. MACHETANZ: Same objections.</p> <p>11 THE WITNESS: I'm not aware of any.</p> <p>12 BY MR. SHAMBUREK:</p> <p>13 Q Now, have you seen a business card of Randy Randolph</p> <p>14 that states that he was affiliated with Spencer Rock</p> <p>15 Products?</p> <p>16 A I had seen one, yes.</p> <p>17 Q And had you seen a business card that indicated that</p> <p>18 Randy Randolph was affiliated with Nugget Construction</p> <p>19 Company?</p> <p>20 A Yes.</p> <p>21 Q Did you ever receive any communication from Randy</p> <p>22 Randolph when he clarified when he was working for one</p> <p>23 company versus another?</p> <p>24 A Yes.</p> <p>25 Q When did he communicate with you?</p>	<p style="text-align: right;">Page 69</p> <p>1 BY MR. SHAMBUREK:</p> <p>2 Q Are you aware if -- well, what was Trecon's</p> <p>3 involvement with the Spencer quarry?</p> <p>4 A They had done a project at the Spencer quarry as</p> <p>5 well. And I can't recall what they provided the material</p> <p>6 for the specific project on.</p> <p>7 Q And in response to some questions from -- I'm sorry.</p> <p>8 A Oh, no. Go ahead.</p> <p>9 Q In response to some questions from Mr. Machetanz you</p> <p>10 were talking about the credit practices. Is it possible</p> <p>11 that credit was extended in this case because Shoreside</p> <p>12 was confident it would be paid from one of the parties</p> <p>13 that it could look to for payment?</p> <p>14 MR. MACHETANZ: Leading. Foundation.</p> <p>15 THE WITNESS: Well, again, I'll repeat what I've</p> <p>16 said all along, is, we did look to the general contractor,</p> <p>17 as a bonded project, for payment.</p> <p>18 BY MR. SHAMBUREK:</p> <p>19 Q And when Shoreside provided fuel directly to Nugget,</p> <p>20 did they dispute any of the charges or the quality of the</p> <p>21 fuel?</p> <p>22 A Not to my knowledge.</p> <p>23 Q And did Bob LaPore and/or Spencer Rock Products</p> <p>24 question the -- any of the billing that you provided them</p> <p>25 for the fuel, lube, and diesel?</p>

<p style="text-align: right;">Page 70</p> <p>1 A No.</p> <p>2 Q They had no dispute over quality or date of delivery?</p> <p>3 A No.</p> <p>4 Q Now, if you had attempted to retrieve the fuel from</p> <p>5 that delivery in May, is it possible that that could have</p> <p>6 resulted in perhaps even some legal action by Bob LaPore</p> <p>7 to challenge your reclamation?</p> <p>8 MR. MACHETANZ: Leading. Speculation.</p> <p>9 THE WITNESS: We didn't have any legal recourse</p> <p>10 to repossess that fuel at the time -- at the time of that</p> <p>11 product, to my knowledge.</p> <p>12 MR. SHAMBUREK: I have no other questions.</p> <p>13 MR. MACHETANZ: I have a few questions then.</p> <p>14 FURTHER EXAMINATION</p> <p>15 BY MR. MACHETANZ:</p> <p>16 Q You just testified you had no legal recourse to</p> <p>17 reclaim the rail car; is that correct?</p> <p>18 A To my knowledge.</p> <p>19 Q At the time that you delivered the rail car, you had</p> <p>20 unpaid invoices from Spencer Rock Products; is that</p> <p>21 correct?</p> <p>22 A That's correct.</p> <p>23 Q And as of June 1, those were beyond the 30 days past</p> <p>24 due; weren't they?</p> <p>25 A I believe so. Look back in the records, I'm sure it</p>	<p style="text-align: right;">Page 72</p> <p>1 MR. MACHETANZ: Mark this as 6.</p> <p>2 (Exhibit 6 marked.)</p> <p>3 BY MR. MACHETANZ:</p> <p>4 Q Can you identify that, sir?</p> <p>5 A Yes. It's a February 4th invoice.</p> <p>6 Q No. Exhibit 6, can you identify that, sir?</p> <p>7 A Oh, yes. Yes.</p> <p>8 Q Now, let's look at the second page of that, paragraph</p> <p>9 5. You state, Mr. LaPore made three rail tank purchases:</p> <p>10 February 4th, April 8th, and May 21st, 1997, correct?</p> <p>11 A Uh-huh.</p> <p>12 Q Is that consistent with your recollection?</p> <p>13 A Yes, that is.</p> <p>14 Q Now, let's take a look at the affidavit of Robert</p> <p>15 LaPore, Deposition Exhibit 5, paragraph three. LaPore</p> <p>16 says that only two rail cars were ordered.</p> <p>17 Do you see that, sir?</p> <p>18 A For the Homer Spit project?</p> <p>19 Q Uh-huh.</p> <p>20 A I see that.</p> <p>21 Q So a fair reading of deposition [sic] 5 and 6, would</p> <p>22 it be fair to say that Mr. LaPore disagreed with the</p> <p>23 assertion by Shoreside that Shoreside had ordered -- or</p> <p>24 that Spencer had ordered a rail car on May 21st?</p> <p>25 MR. SEWRIGHT: Objection to the form of</p>
<p style="text-align: right;">Page 71</p> <p>1 was, but --</p> <p>2 Q You also testified, I believe, in response to</p> <p>3 counsel's questioning, that Bob LaPore never disputed the</p> <p>4 amounts owed; is that correct?</p> <p>5 A To my knowledge, he didn't dispute the amounts owed.</p> <p>6 (Exhibit 5 marked.)</p> <p>7 BY MR. MACHETANZ:</p> <p>8 Q Have you ever seen that affidavit before?</p> <p>9 A No, I don't believe I have seen this. If I did, I</p> <p>10 don't recall it.</p> <p>11 Q You don't? Well, let's take a look at that.</p> <p>12 Paragraph three states, "Spencer Rock ordered</p> <p>13 two rail cars for fuel from Shoreside/Marathon for the</p> <p>14 Homer Spit project. The first was ordered and paid for.</p> <p>15 The second was ordered in April, 1997, and has not yet</p> <p>16 been paid for." Do you see that, sir?</p> <p>17 A Yes.</p> <p>18 Q Do you believe -- I believe you previously testified</p> <p>19 that Spencer had ordered three rail cars; is that correct?</p> <p>20 A For this particular project?</p> <p>21 Q Yes.</p> <p>22 A I believe -- I don't know which ones for --</p> <p>23 Q February, April, and May?</p> <p>24 A Yes. I'm not sure if that was specifically to --</p> <p>25 yes, a February --</p>	<p style="text-align: right;">Page 73</p> <p>1 question. Unintelligible, especially at the beginning.</p> <p>2 MR. SHAMBUREK: It might be easier if you re-ask</p> <p>3 it, but that's your call.</p> <p>4 MR. MACHETANZ: Okay. I'll do that. I'd hate</p> <p>5 to be considered unintelligible.</p> <p>6 BY MR. MACHETANZ:</p> <p>7 Q In Exhibit 6, you state that LaPore ordered three</p> <p>8 purchases.</p> <p>9 A Uh-huh. Correct.</p> <p>10 Q In Exhibit 5, LaPore only indicates there's two</p> <p>11 purchases, correct?</p> <p>12 A Now he states that he ordered two rail cars of fuel.</p> <p>13 The first was ordered and paid for; the second, ordered in</p> <p>14 April of '97, has not yet been paid for. That's</p> <p>15 incorrect.</p> <p>16 Q Do you recall, though -- does this refresh your</p> <p>17 recollection that Spencer disputed supplying -- or</p> <p>18 ordering the May 21st rail car?</p> <p>19 A That they disputed ordering the May 21st?</p> <p>20 Q Yes, sir.</p> <p>21 A We have never been notified that there's a dispute.</p> <p>22 Q Really.</p> <p>23 A From Bob LaPore.</p> <p>24 MR. SHAMBUREK: Let me object to the extent it</p> <p>25 calls for a legal conclusion, but we can try to address</p>

<p style="text-align: right;">Page 74</p> <p>1 that later.</p> <p>2 MR. MACHETANZ: Okay.</p> <p>3 BY MR. MACHETANZ:</p> <p>4 Q Would you turn to --</p> <p>5 MR. SEWRIGHT: I'm going to object to some of</p> <p>6 those questions, too, Traeger, as misstating LaPore's</p> <p>7 entire affidavit.</p> <p>8 BY MR. MACHETANZ:</p> <p>9 Q Would you turn to page four of this affidavit.</p> <p>10 MR. SEWRIGHT: Which one?</p> <p>11 MR. MACHETANZ: Exhibit 5.</p> <p>12 BY MR. MACHETANZ:</p> <p>13 Q Looking at the certificate of service, who is the</p> <p>14 third counsel there?</p> <p>15 A Mr. Steve Shamburek.</p> <p>16 Q Is that your counsel?</p> <p>17 A That's correct.</p> <p>18 Q And it's your testimony as you sit here today that</p> <p>19 Mr. LaPore never advised you that he disputed the May 21st</p> <p>20 shipment?</p> <p>21 MR. SHAMBUREK: I just object to the extent it</p> <p>22 calls for a legal conclusion, but he can answer.</p> <p>23 BY MR. MACHETANZ:</p> <p>24 Q Go ahead.</p> <p>25 A There was no discussions that I had with him on it.</p>	<p style="text-align: right;">Page 76</p> <p>1 you yapping away?</p> <p>2 MR. SEWRIGHT: Traeger, stop acting like a</p> <p>3 little pit bull.</p> <p>4 Hey, I'm objecting to your misstating what's</p> <p>5 going on and to your objection. You want to sit back down</p> <p>6 and stop being an idiot?</p> <p>7 MR. MACHETANZ: No, I'm not being an idiot.</p> <p>8 You're being --</p> <p>9 MR. SEWRIGHT: I'll stand up here.</p> <p>10 MR. MACHETANZ: Okay. Now, I have a right to</p> <p>11 make an objection.</p> <p>12 MR. SEWRIGHT: And I have a right to make an</p> <p>13 objection and I just did. Now sit down, Traeger. Let's</p> <p>14 go.</p> <p>15 MR. MACHETANZ: I'm opposing a little</p> <p>16 commentary. That's not appropriate.</p> <p>17 MR. SEWRIGHT: Counsel -- I've stated my</p> <p>18 objection.</p> <p>19 MR. MACHETANZ: Your objection to an objection.</p> <p>20 Okay.</p> <p>21 MR. SEWRIGHT: That's correct.</p> <p>22 THE WITNESS: If you could --</p> <p>23 MR. SHAMBUREK: I'll rephrase the question</p> <p>24 again.</p> <p>25 BY MR. SHAMBUREK:</p>
<p style="text-align: right;">Page 75</p> <p>1 Q And you've never subsequently been aware that</p> <p>2 Mr. LaPore disputed the May 21st shipment?</p> <p>3 A Correct.</p> <p>4 MR. MACHETANZ: I have no further questions</p> <p>5 pending review of the subsequent documents produced by</p> <p>6 your counsel yesterday.</p> <p>7 MR. SHAMBUREK: I have a few follow-on</p> <p>8 questions.</p> <p>9 FURTHER EXAMINATION</p> <p>10 BY MR. SHAMBUREK:</p> <p>11 Q Would you take a look at paragraph five of the LaPore</p> <p>12 affidavit. And if I could read this, does it say, "No</p> <p>13 other material was ordered by Spencer Rock. Mr. Randy</p> <p>14 Randolph ordered all remaining rail cars of fuel on behalf</p> <p>15 of Nugget Construction Company, Inc."</p> <p>16 Is it possible that Mr. LaPore viewed that</p> <p>17 order, purchase number three on May 21, 1997, as an order</p> <p>18 by Randy Randolph in his capacity with Nugget Construction</p> <p>19 Company, Inc.?</p> <p>20 MR. MACHETANZ: Speculation, leading, lack of</p> <p>21 foundation.</p> <p>22 MR. SEWRIGHT: It isn't lack of foundation.</p> <p>23 He's using the affidavit you were using, counsel.</p> <p>24 MR. MACHETANZ: There's not an objection, is</p> <p>25 there, from you? There's not a question pending. Why are</p>	<p style="text-align: right;">Page 77</p> <p>1 Q Is it possible that Mr. LaPore viewed that third</p> <p>2 purchase of fuel, on or about May 21, 1997, as having been</p> <p>3 made by Randy Randolph in his capacity as a representative</p> <p>4 of Nugget Construction Company, Inc.?</p> <p>5 A Yes.</p> <p>6 MR. MACHETANZ: Foundation, leading,</p> <p>7 speculation.</p> <p>8 BY MR. SHAMBUREK:</p> <p>9 Q And paragraph six says, "Once Nugget Construction</p> <p>10 Company, Inc., became involved in the pit through the</p> <p>11 support agreement, Spencer Rock had no control over</p> <p>12 Nugget, the ordering of the fuel, or the running of the</p> <p>13 pit whatsoever."</p> <p>14 Having read that statement in Mr. LaPore's</p> <p>15 affidavit, might that explain why he did not regard his</p> <p>16 company, Spencer Rock Products, as liable for that third</p> <p>17 purchase?</p> <p>18 MR. MACHETANZ: Speculation, leading,</p> <p>19 foundation.</p> <p>20 THE WITNESS: Yes, that's correct.</p> <p>21 BY MR. SHAMBUREK:</p> <p>22 Q And you don't see anything in his affidavit here</p> <p>23 where he challenges the quantity of fuel provided by</p> <p>24 Shoreside Petroleum?</p> <p>25 A Quantity or quality, that is correct.</p>

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1 Q And he doesn't question here, based on your review,	1 CERTIFICATE
2 that it was used for the Homer project; is that correct?	2 I hereby certify that I have read the foregoing
3 A That is correct.	3 transcript and accept it as true and correct, with the
4 Q And you've received many copies of legal documents	4 following exceptions:
5 from my office, correct?	5 =====
6 A That is correct.	6 PAGE LINE CORRECTION
7 Q And some of those may be sent to Mr. Neibrugge for	7 _____
8 review?	8 _____
9 A That is correct.	9 _____
10 Q So it's possible that you may have -- you or Mr.	10 _____
11 Neibrugge may have reviewed this document?	11 _____
12 A That is correct.	12 _____
13 Q And you don't have any reason to believe that	13 _____
14 Mr. LaPore disputes that a third delivery of fuel was made	14 _____
15 to -- or for the use of the Spencer quarry or the Homer	15 _____
16 project?	16 _____
17 MR. MACHETANZ: Leading.	17 _____
18 BY MR. SHAMBUREK:	18 _____
19 Q You can answer.	19 _____
20 A That's correct.	20 Date DDD
21 Q And in response to any of the questions posed this	21 (Use additional paper to note corrections as
22 morning, you also incorporate all of Shoreside Petroleum's	22 needed, signing and dating each page.) (SW)
23 prior discovery responses?	23 _____
24 MR. MACHETANZ: Objection. Overbroad.	24 _____
25 BY MR. SHAMBUREK:	25 _____
Page 79	Page 81
1 Q You can answer.	1 REPORTER'S CERTIFICATE
2 A Say that again?	2 I, SUSAN J. WARNICK, RPR, and Notary Public in
3 Q In response to all the questions today, do you	3 and for the State of Alaska do hereby certify:
4 incorporate all of the prior responses of Shoreside	4 That the witness in the foregoing proceedings was
5 Petroleum to prior discovery requests?	5 duly sworn; that the proceedings were then taken before me
6 MR. MACHETANZ: Overbroad.	6 at the time and place herein set forth; that the testimony
7 THE WITNESS: Yes, I do.	7 and proceedings were reported stenographically by me and
8 MR. SHAMBUREK: That's all the questions I have.	8 later transcribed under my direction by computer
9 MR. MACHETANZ: Anything else? Done.	9 transcription; that the foregoing is a true record of the
10 (Proceedings adjourned at 11:00 a.m.)	10 testimony and proceedings taken at that time; and that I
11	11 am not a party to nor have I any interest in the outcome
12	12 of the action herein contained.
13	13 IN WITNESS WHEREOF, I have hereunto subscribed my
14	14 hand and affixed my seal this ____ day of _____,
15	15 2005.
16	16
17	17
18	18 _____
19	19 SUSAN J. WARNICK,
20	20 Registered Professional Reporter
21	21 Notary Public for Alaska
22	22 My Commission Expires: April 8, 2006
23	23
24	24
25	25

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